



Hendry County Sheriff's Office

General Order 17.2

TITLE: Family Medical Leave Act	SHERIFF'S APPROVAL: Digital
ORIGINATION DATE: October 10, 2018	REVISION DATE: May 23, 2019
RELATED REFERENCES: <i>Federal Law Title 29, Part 825, Chapter 119, F.S.</i> CFA: N/A	
REVIEW FREQUENCY: 3 YEARS	DATE OF NEXT REVIEW: May 23, 2022

I. PURPOSE: The purpose of this order is to establish a policy/procedure for the Family Medical Leave Act (FMLA).

II. SCOPE: This order shall apply to all sheriffs' office members.

III. POLICY:

- A. The Hendry County Sheriff's Office has adopted this policy to implement the terms of the Family and Medical Leave Act of 1993 (FMLA). Eligible employees are entitled to family and medical leave (FML) on the terms and conditions stated in this policy, the regulations issued by the Department of Labor under the FMLA and in other applicable Hendry County Sheriff's Office leave policies.
- B. Eligible employees are entitled to take up to 12 weeks of leave in a 12-month period for these qualifying events:
 - 1. The birth, adoption or placement for foster care of a child of the employee and to care for such child (leave must be taken during the 12-month period following the birth or placement and must be taken in a single consecutive period and may not be taken intermittently or on a reduced schedule unless the employee and the employer agree otherwise, subject to pre-approval by the Sheriff or designee);
 - 2. To care for an immediate family member (spouse, child, or parent) with a serious health condition (leave may be taken intermittently or on a reduced leave schedule when medically necessary, subject to proper certification);
 - 3. A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position (leave may be taken intermittently or on a reduced leave schedule when medically necessary, subject to proper certification);
 - 4. Any "qualifying exigency" arising out of the fact that an employee's spouse, parent, son or daughter is on active duty or has been called to active duty in the Armed Forces in support of a contingency operation.

- C. An eligible employee is entitled to a combined total of 26 weeks of leave during a single 12-month period to care for a parent, son, daughter, spouse or next of kin who is a covered service member or a covered veteran, regardless of whether the employee has taken leave for another FMLA qualifying reason in the past 12 months. This leave is only available during a single 12-month period. (Leave may be taken intermittently or on a reduced leave schedule when medically necessary, subject to proper certification.)
 - D. Any leave taken under one or more of these circumstances will be counted toward the employee's total entitlement to FMLA for that year.
 - E. An employee will be required to use all available paid leave (sick, compensatory, and/or PTO) concurrently with FMLA, i.e., paid leave time is included in the determination of the 12-week period, not in addition to 12-weeks of unpaid time. Except employees using a verified short term disability plan may supplement their pay using accrued leave.
 - F. Married Couples – Birth of a Baby:
 - 1. An eligible husband and wife who both work for the Sheriff's Office will each be eligible to use a combination of up to 12 weeks in a 12-month period if leave is taken for:
 - a. The birth of a child or to care for a newborn.
 - b. Placement of an adopted or foster child with the employee or to care for the child after placement.
 - G. All information relating to health conditions is confidential medical information; this information must be sealed in an envelope marked "Confidential, Medical Information," for internal and external mail and must be maintained in confidential medical files, which are not public records, as outlined in Florida Statute 119.
-

IV. PROCEDURE:

A. Requesting Leave

- 1. An employee must provide advance notice of his/her intent to take FMLA to the immediate supervisor not less than 30 days before leave is to begin or, in emergencies, as soon as is practicable.
 - a. The employee requesting leave for FMLA must submit a Memorandum via their chain of command to the Sheriff and a copy sent to Human Resources. Human Resources will determine the eligibility of the employee for FMLA and ensure that all documentation is in order. Human Resources will issue a Notice of Eligibility and Rights & Responsibilities from U.S. Department of Labor Form WH-381 in response to the employee's FMLA request memorandum within two days of receipt.

B. Imposition of Leave:

- 1. When an employee has been absent and has not requested FMLA themselves, after the 7th day of absence, FMLA will be imposed on the employee. A copy will also be forwarded to the employee's supervisor.

2. Supervisors are required to notify Human Resource within one business day if the employee is absent from work due to a qualifying event, and, to his/her knowledge, the employee has not requested FMLA.
3. FMLA will be imposed on employees who are unable to perform their essential job functions due to an on-the-job injury and miss more than 7 days.

C. Medical Documentation and Additional Opinions

1. The Sheriff's Office has the right to have the employee examined and/or the medical documentation reviewed by a physician/mental health professional chosen by and paid by the Sheriff's Office.
2. Additional Opinion
 - a. The Sheriff's Office has the right to require a second medical opinion by a physician of the agency's choosing if the agency deems it necessary to determine if the leave is warranted under this policy. The cost of the second opinion will be paid by the Sheriff's Office.
 - b. A third opinion by a physician mutually agreed upon by the parties may be necessary if the first two opinions conflict. The cost of the third opinion will be paid by the Sheriff's Office.

D. Intermittent or Reduced Schedule Leave

1. FMLA may be taken intermittently or on a reduced leave schedule when medically necessary. The minimal increments that may be used for FML must be consistent with the corresponding leave policy.
2. The employee may be transferred temporarily to an available alternative position with an equivalent pay rate and benefits, to better accommodate recurring periods of leave due to foreseeable medical treatment.

E. Return to Work (Following FMLA)

1. Prior to an employee's return to work from FMLA, a completed Physician Statement Form must be submitted to Human Resources. The FML Return to Work Form is to be completed by the employee's health care provider, certifying that the provider has reviewed the job description for the position held by the employee and found the employee medically qualified to perform the essential functions of their job without any restrictions, or list any restrictions and/or limitations that apply.

F. Rights of Eligible Employees

1. Upon return from FMLA, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment (certain exceptions apply for "key" employees). The equivalent job must also require substantially equivalent use of skills, effort, responsibility, and authority. However, if the employee unequivocally states that he/she will not return to work, or the Sheriff's Office can show that the employee "would not otherwise have been employed if leave had not been taken," restoration to the employee's position may be denied.
2. The employee's use of FMLA qualified leave will not result in the loss of any employee benefit that the employee earned or was entitled to before using FMLA, or that they would have attained had the employee not taken leave. However, there will be no sick/vacation accrual during any

unpaid portion of FMLA effective the **FIRST** full pay period of unpaid leave. The employee has the right to continued health coverage while on FMLA under the same terms and conditions that applied before the employee went on leave.

a. Health Insurance Benefits

- (1) During unpaid FMLA, payment of the employee's portion of dependant insurance premiums is to be made by the employee to the insurance coordinator on or before the first day of each month. The Sheriff's Office obligation to maintain health insurance coverage ceases if an employee on unpaid FMLA fails to make a premium payment within 30 days of the date the payment is due.
3. Employees may utilize accumulated sick leave beyond the entitled FMLA absence as established in *GO 17.5: Sick Leave*, or may use accumulated PTO accruals for leave that extends beyond the entitled FMLA leave of absence subject to pre-approval by the Sheriff or designee.
4. The Hendry County Sheriff's Office may not interfere with, restrain, or deny the exercise of any right provided under FMLA. The Sheriff's Office will not discriminate against employees who take FMLA and may not consider the taking of FMLA as a negative factor in employment actions, such as promotions, evaluations, or disciplinary actions. Furthermore, it is unlawful to discharge or discriminate against any individual for opposing any practice that would violate the FMLA or because the employee was involved in a proceeding related to the FMLA.
5. FMLA rights cannot be waived. For example, employees cannot "trade off" the right to take FMLA against another benefit offered by the Sheriff's Office. Furthermore, the agency is prohibited from inducing any employee to waive his/her rights under the FMLA.

G. Fraud/Other Basis for Termination of Employment During Leave

1. An employee who fraudulently obtained FMLA forfeits the Act's protection.
2. An employee who takes another job while on FMLA will be subject to termination by the Sheriff's Office.

H. Periodic Reports of Employee's Status and Intent to Return to Work

1. Employees on FMLA are required to submit periodic reports to Human Resource regarding their status and intent to return to work once every 30 days.
2. The agency may require periodic re-certification of the serious health condition on which the leave is based.

V. GLOSSARY:

CHILD – A daughter or son who is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability.

CONTINUING TREATMENT – Includes any one or more of the following:

- A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: 1) Treatment by

a health care provider two or more times within 30 days of the first day of incapacity; or 2) treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of a healthcare provider.

- A period of incapacity due to pregnancy or prenatal care.
- A period of incapacity or treatment for such incapacity due to a chronic serious health condition.
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
- Any period of absence to receive multiple treatments by a healthcare provider.

DISCRIMINATION – Includes taking action against or refusing to act with regard to an employee with respect to his or her compensation, terms, conditions, or privileges of employment based upon his or her race, color, national origin, religion, sex, age, medical condition, disability, or veteran status. This includes limiting, segregating or classifying employees or applicants for employment in any way which would serve to deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, national origin, religion, sex, age, medical condition, disability, or veteran status.

ELIGIBLE EMPLOYEE (FMLA purposes) – An employee who has been employed by the Hendry County Sheriff's Office for at least 12 months, has worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the requested leave.

FAMILY MEDICAL LEAVE ACT (FMLA) – A provision of 1993 Federal Law (U.S. Department of Labor, Title 29, Part 825) that provides employees a period of leave to care for a serious health problem affecting the employee or qualified member of his/her family.

FORESEEABLE EVENTS – The birth of a child; placement with the employee of a child for adoption or foster care; planned medical treatment of the employee or the employee's spouse, child, or parent; or because of any qualifying exigency arising out of the fact that the spouse, child or parent is on, or has been notified of an impending call or order, to covered active duty.

IMMEDIATE FAMILY MEMBER – As defined by the FMLA, an immediate family member is restricted to employee's: spouse, children, and parents. The FMLA has afforded no provision for in-laws.

KEY EMPLOYEE – A salaried eligible employee who is among the highest paid 10% of the employees in the Sheriff's Office within 75 miles of the facility at which the employee is employed. A key employee may be denied restoration to their position if:

- Such denial is necessary to prevent substantial and grievous economic injury to the operations of the Sheriff's Office;
- The Sheriff's Office notifies the key employee of the intent of the Sheriff's Office to deny restoration on such basis at the time the Sheriff determines that such injury would occur; and,
- In any case in which the leave has commenced, the key employee elects not to return to employment after receiving such notice.

NEXT OF KIN – The nearest blood relative of an employee.

PARENT – The biological, adoptive, step or foster parent of an employee or any other individual who stood in loco parentis to an employee when the employee was a son or daughter.

QUALIFYING EXIGENCY LEAVE – Leaves for short-notice deployment, military events and related activities, financial and legal arrangements, child care and school activities, counseling, rest and recuperation, post-deployment activities and additional activities agreed upon by the employer and employee.

SERIOUS HEALTH CONDITION – An illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care in a hospital, hospice, or residential medical care facility;
- Continuing treatment by a health care provider.

SPOUSE – A husband or wife, as the case may be.

Your electronic signature in Power DMS acknowledges you have read this policy and understand it.